

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 4, 2023 Session

FILED

05/02/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JASMINE LASHAY BLAND

**Appeal from the Circuit Court for Tipton County
No. 10277 A. Blake Neill, Judge**

No. W2022-00174-CCA-R3-CD

The Defendant, Jasmine Lashay Bland, was convicted by a Tipton County Circuit Court jury of leaving the scene of an accident, assault, and burglary of a vehicle. She was sentenced by the trial court as a Range I, standard offender to concurrent terms of two years for the felony burglary of a vehicle conviction, six months for the assault conviction, and thirty days for the leaving the scene of an accident conviction, with the sentences suspended after thirty days of incarceration. On appeal, the Defendant argues that the trial court committed reversible error by not allowing her to cross-examine the victim about a potential source of bias related to the victim's alleged insurance claim for personal injuries. Based on our review, we conclude that this issue is waived because it was not raised in the trial court. Accordingly, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and J. ROSS DYER joined, JJ., joined.

M. Todd Ridley, Franklin, Tennessee (on appeal) and Melissa Downing, Covington, Tennessee (at trial), for the appellant, Jasmine Lashay Bland.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Mark E. Davidson, District Attorney General; and James Walter Freeland, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

According to the State's proof at trial, on the evening of August 30, 2019, the Defendant, a kitchen worker at a Covington nursing home who had conflicts with her co-worker, Sequoia Olden, deliberately rear-ended Ms. Olden's Jeep Cherokee at a traffic light. The Defendant exited her Chevrolet Trailblazer, walked to the victim's Jeep, hit the victim in the face with her fist through the victim's open driver's window, opened the victim's driver's door, and attempted to drag the victim from her vehicle. Unsuccessful, the Defendant returned to her Trailblazer and drove home before police officers responded to the scene. The Tipton County Grand Jury subsequently indicted the Defendant for leaving the scene of an accident, assault involving physical contact with another that a reasonable person would find extremely offensive or provocative, and burglary of a motor vehicle.

Four witnesses testified at the Defendant's December 14, 2021 trial: Amy Brooks, employed at the time of the incident as a Covington Police Department officer, who was dispatched to the accident scene and later located the Defendant at her home; Thomas James McLaughlin, Jr., a passing motorist who called 911 after hearing a woman's screams and seeing an individual attempting to pull another individual out of a stopped vehicle; the victim; and the Defendant.

Officer Brooks testified that she responded to the intersection of Highway 51 and Mueller Brass Road at 8:15 p.m. on August 30, 2019, to find only the victim on the scene. After speaking with the victim and photographing the recent damage to the rear bumper of the victim's Jeep, she drove to the Defendant's home, where she photographed the recent damage to the front of the Defendant's Trailblazer and spoke with the Defendant, who admitted that she had struck the victim's vehicle. She could not recall if the Defendant made a formal written statement that night but recalled later receiving the Defendant's September 16, 2019 written statement in her mailbox at work. She said she did not prevent the Defendant from making a statement on the night of the incident. She remembered that the Defendant mentioned something that night about a stick but could not recall if she saw a stick at the accident scene.

On cross-examination, Officer Brooks testified that she observed that the victim's shirt was torn and recalled that the victim told her that she had been struck in the face. She stated that the victim denied medical attention. She said that a second officer took a statement from an eyewitness waiting at the nearby Walmart. She could not remember if the Defendant was outside when she arrived at the Defendant's home, but she agreed that the Defendant was not attempting to hide herself or her vehicle.

Mr. McLaughlin testified that he was driving westbound on Mueller Brass Road preparing to turn right onto Highway 51 to go to Walmart when his attention was drawn to two vehicles stopped on the left side of the road approximately fifteen to twenty feet from the intersection. He saw someone get out of the vehicle in the back and walk toward the vehicle in the front, and he thought that someone had stopped to assist a motorist whose vehicle had broken down. As he was making his turn, he heard a woman scream, “[G]et your hands off of me. No, stop pulling on me. Leave me alone.” Looking in his rearview mirror, he saw an individual leaning into the front vehicle attempting to drag someone out, and he called 911. On cross-examination, he testified that he did not know either the Defendant or the victim. He acknowledged that he could not identify the Defendant as either of the two individuals and that he did not see the entire incident.

The victim testified that she had worked off and on at Magnolia Creek nursing home since she was eighteen years old. She said she knew the Defendant from having attended school with her and from working with her. She stated that her most recent period of employment at the nursing home began several months before the August 30, 2019 incident, when she was hired as a kitchen aide. She said that the Defendant was a cook at the time, but several weeks prior to the incident, the victim was promoted to cook and the Defendant demoted to kitchen aide, which caused the Defendant to complain to their supervisor that the victim was trying to “take over.”

The victim testified that on the day of the incident, she and the Defendant “got into it about something.” She could not recall the specifics of their argument but said that she was standing by the freezer when the Defendant hit her with the freezer door. The victim stated that she and the Defendant each called their supervisor to report the freezer door episode. Later, at approximately 6:00 p.m., she was sweeping the kitchen floor when the Defendant stood in the middle of her trash pile and refused to move. She responded by sweeping over the Defendant’s feet, and the Defendant challenged her to come outside so that the Defendant could “whoop [her] a**.”

The victim testified that as she and the Defendant were clocking out at 8:00 p.m., the Defendant “said she was going to follow [the victim] to [the victim’s] house so she c[ould] whoop [the victim’s] a**.” The victim stated that when she went outside to her 2000 Jeep Cherokee, which she had already started, she found the Defendant standing in front of it. The victim said she drove to the end of the nursing home driveway, stopped, and called her supervisor to report the Defendant’s behavior. She then turned right onto Highway 51 to drive home.

The victim testified that she drove to the intersection of Highway 51 and Mueller Brass Road, unaware that the Defendant was following her. She said she was in the right turn lane and was braking at the red light when she felt something hit her vehicle from

behind. She completed her turn onto Mueller Brass Road, drove a short distance, stopped, and reached for her cell phone, which had fallen onto the front passenger floorboard. When she sat back up, the Defendant hit her in the eye with her fist through the victim's open window. At the same time, the Defendant was "trying to unlock the door and pull [the victim] . . . out [of] the truck." The victim testified that she was unaware of the Defendant's presence until the Defendant hit her in the eye. She said she did not see the Defendant walking toward her Jeep.

The victim testified that the Defendant "had [her] by [her] shirt by [her] collar pulling on [her], and told [her] . . . she was fixing to whoop [her] A because [the victim] done messed up [the Defendant's] truck." The victim said that she kicked the Defendant to get the Defendant off her while she was still seated in the driver's seat of her Jeep. She stated that the Defendant did not pull her out, and that she never exited her Jeep. She said she called 911 after the Defendant left the scene.

On cross-examination, the victim acknowledged that, at the time of the incident, her supervisor was planning to switch either her or the Defendant to the day shift due to their history of work conflicts. She disagreed that the day shift was more desirable or that she wanted the day shift. She denied that she had her Jeep idling beside the building's exit walkway or that she accelerated toward the Defendant as the Defendant was leaving. She testified that the Defendant opened her car door after hitting her through her open window. She said her only injuries were a scratch and a red eye, and she agreed that she denied medical attention. She repeated that she never got out of her Jeep.

The victim acknowledged she had a wooden stick inside the passenger compartment of her Jeep, which she said was used to hold up the hood of the vehicle. She denied that it was a sharpened stick, describing it as "[l]ike a 2x4 or something[.]" She said that she attempted unsuccessfully to grab the stick during the struggle with the Defendant. She did not think that the Defendant ever grabbed the stick. On redirect examination, she testified that the stick was "like a stick that you had found like underneath a tree or something, just a stick." She said she never hit the Defendant with the stick.

The Defendant testified that, at the time of the July 30, 2019 incident, she had worked as a cook at Magnolia Creek nursing home for seven years. However, she had just accepted a position at Northwest Head Start with school hours that better accommodated her children's schedule, and on July 30, 2019, had given her two weeks' notice to her supervisor. She said that when she gave her notice, her supervisor offered her the day shift at Magnolia Creek, with her new schedule to begin the next day, July 31.

The Defendant testified that, as a consequence, she was happy, excited, and singing at work that day, which she assumed upset the victim because the victim "just started

coming at [her] for” reasons that were not apparent to her. She said she was washing her hands at the kitchen sink at approximately 6:00 p.m. when the victim swept a pile of trash on her feet. She stated that she said “[E]xcuse you[,]” to the victim and the victim responded, “[N]o, excuse you, you see me sweeping.” The Defendant testified that she did not say anything else to the victim. However, she “instantly took out [her] phone and started calling and texting [her] boss” to report the victim’s behavior.

The Defendant testified that she next saw the victim when she was clocking out and the victim said, “B****, be ready[,]” as she walked past. She thought the victim had already left the premises, but as she was walking to her vehicle, the victim accelerated toward her and almost hit her. The victim lowered her window as she drove past, repeated the same threat she had made as they were clocking out, and then pulled onto Highway 51 “like a bat out of hell.”

The Defendant testified that, although still frightened, she collected herself, got into her vehicle, and, approximately five minutes after the victim had left, drove out of the parking lot to go home. As she was approaching Mueller Brass Road, she saw a car beside her in the left lane and realized that it was the victim. She said that the light was green when the victim suddenly pulled in front of her and “stopped smack dab in the middle of the highway in front of [her] car[.]” She braked, but she was unable to stop before hitting the back of the victim’s vehicle.

The Defendant testified that the victim turned right onto Mueller Brass Road and stopped and that she followed and stopped her vehicle behind the victim’s vehicle. The victim opened her car door, exited her vehicle, and began walking toward the Defendant, and the Defendant exited the Defendant’s vehicle and began walking toward the victim. The Defendant said that she and the victim were approximately at the rear end of the victim’s vehicle when the victim pulled a sharpened stick from behind her back and, with the sharpened end pointed toward the Defendant, struck the Defendant with the stick. The Defendant stated that she grabbed the end of the stick and grappled with the victim for control. When she realized she would not be able to pull the stick from the victim, she let go, ran to her car, and left the scene.

The Defendant testified that her car was so severely damaged from the accident that she was unable to drive it faster than ten miles per hour. When she reached home, she had to search for her cell phone and had just located it in her vehicle when she saw the approaching police officers. She said she flagged the officers down and told them about the victim’s abruptly stopping her vehicle in front of her, but the officers were rude and would not allow her to make a written statement. She stated the officers threatened to take her to jail but ultimately issued her a citation instead. The Defendant denied that she

assaulted the victim or placed any part of her body inside the victim's vehicle. She said she left the accident scene because she thought it necessary to deescalate the situation.

On cross-examination, the Defendant acknowledged having said in her September 16, 2019 written statement to police that the victim was driving erratically, repeatedly speeding up and then slowing down, as they traveled the approximate half-mile from the nursing home to the intersection of Highway 51 and Mueller Brass Road. When asked why she did not maintain a safe distance from the victim's vehicle so that she could stop when the victim's brake lights came on, the Defendant responded that she was "still trying to figure out what's going on at this point." She acknowledged that there was no damage to the side of either vehicle and that the victim's vehicle was directly in front of her at the moment of impact.

ANALYSIS

The only issue the Defendant raises on appeal is whether the trial court committed reversible error by limiting her cross-examination of the victim about a potential source of bias. Specifically, the Defendant contends that the trial court's ruling that prohibited defense counsel from questioning the victim about a claim for personal injuries that the victim allegedly filed against the Defendant's automobile insurance was "in direct conflict with Rule 616 and this Court's precedent." The Defendant asserts that the ruling prevented her from exploring the victim's potential source of bias and amounted to constitutional error that was not harmless beyond a reasonable doubt because "[t]his was a close case that turned almost entirely on the jury's assessment of [the victim's and the Defendant's] credibility." The State argues that the trial court properly exercised its discretion to limit the scope of cross-examination and in the alternative, that the Defendant waived consideration of the issue by not raising the issue of bias before the trial court.

During cross-examination, the prosecutor objected to defense counsel's query of whether the victim had filed "an insurance claim against [the Defendant] for injuries?" At the jury-out hearing that ensued, the following exchange occurred:

[DEFENSE COUNSEL]: She made a claim for injuries and that was denied, that would go to her credibility when she just said that she wasn't injured.

[PROSECUTOR]: I think - -

THE COURT: Made a claim with injuries to who?

[DEFENSE COUNSEL]: To the insurance company.

[PROSECUTOR]: Unless its's some good faith knowledge that such a claim was made, I have no idea.

[DEFENSE COUNSEL]: That's what my client tells me.

THE COURT: I mean, wouldn't the denial of it be hearsay or something? How would that be admissible, the denial? I guess I don't know - - I used to work for insurance companies. I don't know what their - - they don't deny claims. Did she sue somebody?

[DEFENSE COUNSEL]: I think she filed a claim against [the Defendant's] insurance claiming injuries sustained during this incident.

[PROSECUTOR]: If there is some evidence - -

THE COURT: I don't think they're even alleging bodily injury. I don't know the injury is an issue here.

[DEFENSE COUNSEL]: It goes to her credibility if she's made false claims on an insurance claim.

THE COURT: How would you prove that they're false if the insurance company just denied it, because they just didn't feel like it was - - or sue us and see what happens. I mean, who knows.

[DEFENSE COUNSEL]: Understand.

THE COURT: All right. So I am just going to say it's not relevant.

The above exchange comprises the entire discussion of the issue at trial. However, in addressing the issue in its denial of the motion for new trial, the trial court found it to be "without merit because the evidence of guilt was substantial, and, therefore, the exclusion of this evidence, even if it should have been admissible, was harmless."

Rule 616 provides that "[a] party may offer evidence by cross-examination, extrinsic evidence, or both, that a witness is biased in favor of or prejudiced against a party or another witness." Tenn. R. Evid. 616. A "defendant's constitutional right to confront the witnesses against him includes the right to conduct meaningful cross-examination. *State v. Wyrick*, 62 S.W.3d 751, 770 (Tenn. Crim. App. 2001). "It is a fundamental principle of law that an accused has the right to cross-examine a prosecution witness to impeach the credibility or establish the motive or prejudice of the witness." *State v. John Fred Howard*, No. W2008-00208-CCA-R3-CD, 2009 WL 1034506, at *16 (Tenn. Crim.

App. Apr. 17, 2009), *perm. app. denied* (Sept. 28, 2009). However, “[t]he scope of cross-examination is largely within the discretion of the trial court; that discretion will not be disturbed absent abuse.” *State v. Lewis*, 803 S.W.2d 260, 262 (Tenn. Crim. App. 1990). A trial court abuses its discretion in limiting the scope of cross-examination of witnesses if the court “unreasonably restrict[s] a defendant’s right to cross-examine a witness against him.” *State v. Echols*, 382 S.W.3d 266, 285 (Tenn. 2012).

The State contends that the issue of whether the trial court’s limitation on cross-examination prevented the Defendant from exploring the victim’s potential source of bias is waived because the Defendant never articulated the Rule 616 theory at trial. We agree with the State. “It is elementary that a party may not take one position regarding an issue in the trial court, change the strategy or position in mid-stream, and advocate a different ground or reason in this Court.” *State v. Dobbins*, 754 S.W.2d 637, 641 (Tenn. Crim. App. 1988). The record reflects that the position the Defendant took at trial was that the victim’s filing of an insurance claim for personal injuries was relevant to impeach her credibility. In considering the admissibility of the evidence for impeachment purposes, the trial court found that it was not only hearsay, but also that the insurance company’s denial of the victim’s claim for personal injuries did not necessarily show that the victim’s claim of personal injuries was false. On this latter point, we note that, contrary to defense counsel’s assertion, the victim did not testify that she had no injuries. Instead, when asked whether she had any *noticeable* injuries, the victim responded, “Any noticeable injuries? No, I didn’t have nothing but a scratch on me and my eye was red.” We also note that the Defendant made no offer of proof as to the excluded evidence, presumably because the only information defense counsel had about the claim was the hearsay statement of the Defendant.

Unlike the position she advocated at trial, on appeal and at oral argument, the Defendant argued that the trial court erred by limiting cross-examination of the victim on the alleged insurance claim because the victim’s filing of an insurance claim for personal injury would have shown the victim’s bias. Because this argument was not raised before the trial court and is raised for the first time on appeal, the issue, as per *Dobbins*, is waived. *Id.*

Moreover, we disagree with the Defendant’s contention that the case hinged on a credibility battle between the victim and the Defendant. Regardless of which party initiated the conflict, or the motives for each party’s actions, the victim’s testimony that the Defendant tried to drag her from her vehicle was corroborated by the disinterested witness, who called 911 after hearing a woman’s screams and seeing an individual leaning into the front vehicle attempting to drag someone from it. The victim’s testimony that the Defendant left the scene before the arrival of the police was corroborated not only by the police officer, but also by the Defendant herself.

CONCLUSION

Based on our review, we conclude that the Defendant has waived consideration of her Rule 616 issue on appeal by failing to raise it in the trial court. Accordingly, we affirm the judgments of the trial court.

JOHN W. CAMPBELL, SR., JUDGE